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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

FEB 27 2008

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
THE UNION PACIFIC RAILROAD COMPANY
TO ALTER FOUR CROSSINGS OF THE UNION
PACIFIC RAILROAD IN COCHISE COUNTY,
ARIZONA.

DOCKET NO. RR-03639A-07-0422

DECISION NO. 70161OPINION AND ORDER

DATE OF PROCEDURAL CONFERENCE: August 16, 2007

DATE OF HEARING: November 20, 2007

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern

APPEARANCES: Messrs. Anthony J. Hancock and Terrance L. Sims, Beaugureau, Zukowski, Hancock, Stoll & Schwartz, P.C., on behalf of the Union Pacific Railroad Company; and

Ms. Kenya Collins, Staff Attorney, Legal Division
on behalf of the Safety Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On July 12, 2007, the Union Pacific Railroad Company ("Railroad") filed with the Arizona Corporation Commission ("Commission") an Application for approval for the Railroad to alter four crossings of the Railroad in Cochise County, Arizona by adding a second set of mainline tracks. Three of these crossings are in the City of Willcox ("City"), in Cochise County ("County"), Arizona as follows: Maley Street, AAR/DOT No. 741 397H; Stewart Street, AAR/DOT No. 741 398P; and Patte Road, AAR/DOT No. 741 399W. The fourth is in Cochise County at Country Club Drive, AAR/DOT No. 741 500N ("Application").

On July 17, 2007, the Commission's Safety Division's Railroad Safety Section ("Staff") filed a Motion for a procedural conference to be scheduled after the end of July.

1 On August 7, 2007, by Procedural Order, a Procedural Conference was scheduled on August
2 16, 2007.

3 On August 16, 2007, Staff and the Railroad appeared with counsel at the Procedural
4 Conference to discuss aspects of the Application including public notice, other procedural matters
5 and to determine a date for the hearing. The parties agreed to a hearing being held on November 20,
6 2007.

7 On August 21, 2007, by Procedural Order, a hearing was scheduled on the Railroad's
8 Application on November 20, 2007, public notice ordered, and other filing dates established.

9 On October 26, 2007, Staff filed its report which recommends approval of the Application.

10 On November 14, 2007, the Railroad filed certification that it had provided public notice
11 pursuant to the terms of the Commission's Procedural Order by publishing twice in the *Arizona Daily*
12 *Star* and *Tucson Citizen*, daily newspapers of general circulation in the City and in the County and
13 four times in the *Arizona Range News*, a weekly publication of general circulation in the City and
14 County.

15 On November 20, 2007, a hearing was held before a duly authorized Administrative Law
16 Judge of the Commission at its offices in Phoenix, Arizona. The Railroad and Staff were present
17 with counsel. At the conclusion of the hearing, the matter was taken under advisement pending
18 submission of a Recommended Opinion and Order to the Commission.

19 * * * * *

20 Having considered the entire record herein and being fully advised in the premises, the
21 Commission finds, concludes, and orders that:

22 FINDINGS OF FACT

23 1. On July 12, 2007, the Railroad filed an Application in which it requested that the
24 Commission issue an Opinion and Order which approves the alteration of four crossings of the
25 Railroad in the City of Willcox in Cochise County, Arizona by adding a second set of mainline tracks
26 at each of the crossings.¹

27 ¹ According to the Staff Report, on March 14, 2007, prior to the filing of the Application, the Railroad, Staff and City
28 officials participated in a diagnostic review of the proposed improvements at Maley Street, Stewart Street, Patte Road and
Country Club Drive, which is in the County; however, County officials chose not to participate in the review.

1 2. Three of the crossings are located within the City as follows: Maley Street, AAR/DOT
2 No.741 397H; Stewart Street, AAR/DOT No. 741 398P; and Patte Road, AAR/DOT No. 741 399W.
3 The fourth crossing is in the County and is located at Country Club Drive, AAR/DOT No. 741 500N.

4 3. On July 23, 2007, the City filed a copy of a City Resolution which approves and
5 supports the Railroad's Application to the Commission for the alteration of the three crossings which
6 are located within the City's limits.

7 4. Pursuant to the Commission's Procedural Order, the Railroad provided public
8 notification of its Application herein by publishing notice twice in newspapers of general circulation,
9 *The Arizona Daily Star* and *Tucson Citizen*, and four times in *The Arizona Range News*, a weekly
10 publication of general circulation in the City and County where the alterations are to take place.
11 Additionally, the Railroad mailed notice of the Application and hearing thereon to the City's
12 Manager, the Acting Director of the Cochise County Highway and Flood Plain Department and to the
13 Manager of the Utilities and Railroad Engineering Section of the Arizona Department of
14 Transportation ("ADOT").

15 5. The hearing was held as scheduled on November 20, 2007.

16 6. The Railroad's tracks run parallel to Interstate 10 in southeastern Arizona
17 approximately one mile southeast of the interstate highway.

18 7. The downtown area and the majority of the population of the City are located between
19 the Interstate 10 and the Railroad's tracks with a smaller portion of the City and its population located
20 southeast of the tracks.

21 8. Currently, all four of the crossings are equipped with flashing lights, bells and gates.

22 **MALEY STREET**

23 9. The Application provides for the construction of a second set of mainline tracks
24 parallel to and south of the Railroad's existing tracks where they cross Maley Street, which is the
25 westernmost of the four crossings described in the Application and the most highly traveled in terms
26 of vehicular traffic. Plans call for the Railroad to re-profile a portion of the two-lane asphalt roadway
27 where it meets the tracks and for the replacement of existing automatic warning equipment with an
28 upgrade to new 12-inch LED flashing lights, gates and bells as well as for the construction of a new

1 concrete crossing surface. A concrete median will be installed to the north and south of the tracks to
2 accommodate additional gates and to preclude motorists from driving around them. According to
3 Mr. James Smith, the Railroad's Manager of Industry and Public Projects, at the Maley Street
4 crossing, the Railroad will also install cantilevers. He also testified that the Railroad will utilize
5 constant warning time circuitry² at all double-track crossings which are constructed in Arizona. (Tr.
6 at p. 48)

7 10. Based on an engineering report which was provided to Staff by the Railroad, current
8 traffic data indicates Average Daily Traffic ("ADT") at the Maley Street crossing is 4,737 vehicles
9 per day and projected to be 4,834 vehicles per day in 2016. The current Level of Service ("LOS") at
10 the crossing based on the standards of the American Association of State Highway and
11 Transportation Officials ("AASHTO") is LOS A, or least congested.

12 11. According to the Staff Report, based on the records of Staff and the Federal Railroad
13 Administration ("FRA"), there have been only three accidents at Maley Street, with one resulting in a
14 fatality in 1984.

15 12. The estimated cost of the proposed upgrade to the Maley Street crossing is \$387,797
16 which will be borne entirely by the Railroad.

17 STEWART STREET

18 13. The Stewart Street crossing is located one block east of the Maley Street crossing and,
19 with the addition of the second set of mainline tracks, the proposed upgrade will involve re-profiling
20 a portion of the two-lane asphalt roadway where it meets the tracks and will have its existing
21 automatic warning devices replaced and upgraded with new 12-inch LED flashing lights, gates and
22 bells along with the construction of a new concrete surface.

23 14. Staff's Railroad Crossing Inspector, Mr. Chris Watson, testified that the current ADT
24 at the Stewart Street crossing is 601 vehicles per day and it is projected to be 778 vehicles per day in
25 2016 according to data from a consulting firm report. (Tr. at p. 25)

26 15. The current LOS at the Stewart Street crossing is LOS A.

27 _____
28 ² This safety feature helps alleviate a motorist's wait at a crossing because gate arms are not lowered until approximately
20 to 30 seconds before a train's approach to a crossing.

1 16. According to the Staff Report, Commission records and the records of the FRA, there
2 have been two accidents at Stewart Street, one resulting in a fatality in 1998.

3 17. The estimated cost of the upgrade to the Stewart Street crossing is \$222,016 which
4 will be borne solely by the Railroad.

5 **PATTE ROAD**

6 18. The Patte Road crossing is located approximately 1.2 miles east of the Stewart Street
7 crossing and, with the addition of the second set of mainline tracks, the proposed upgrade will
8 involve re-profiling a portion of the two-lane asphalt roadway where it meets the tracks and will have
9 its existing automatic warning devices replaced and upgraded with new 12-inch LED flashing lights,
10 gates and bells along with the construction of a new concrete crossing surface.

11 19. Based on an engineering firm report provided to Staff by the Railroad, current traffic
12 data indicates ADT of 101 vehicles per day and projected to be 131 vehicles per day in 2016. The
13 current LOS at the crossing based on the AASHTO standards is LOS A.

14 20. Both the Commission's Staff and FRA accident records indicate that there have been
15 no accidents, injuries or fatalities at the Patte Road crossing.

16 21. The estimated cost of the proposed upgrade at Patte Road is \$222,443 which will be
17 borne solely by the Railroad.

18 **COUNTRY CLUB DRIVE**

19 22. The Country Club Drive crossing is located 2.8 miles to the east of the Patte Road
20 crossing and the proposed crossing upgrade will involve construction of a second set of mainline
21 tracks to the north of the existing crossing.

22 23. The two-lane asphalt roadway will be re-profiled where it intersects with the
23 Railroad's tracks and the existing automatic warning devices will be replaced and upgraded with new
24 12-inch LED flashing lights, gates and bells along with the construction of a new concrete crossing
25 surface.

26 24. Based on an engineering firm report provided to Staff by the Railroad, current traffic
27 data indicates ADT is 300 vehicles per day and projected to be 389 vehicles per day in 2016. The
28 current LOS at the crossing based on the AASHTO standards is LOS A.

1 25. According to the Commission's Staff and FRA accident records, there have been no
2 accidents, injuries or fatalities at the Country Club Drive crossing.

3 26. The estimated cost of the proposed upgrade at Country Club Drive totals \$230,487
4 which will be borne solely by the Railroad.

5 27. According to the Staff Report, data from the Railroad establishes that there are an
6 average of 48 trains per day which travel through the aforementioned crossings and this number
7 should increase to approximately an average of 84 trains per day in 2016.

8 28. Of the four crossings, only two are used for school bus routes, Maley Street with 12
9 trips per day and Country Club Drive with four trips per day.

10 29. According to the Staff Report, during the diagnostic review held by Staff with the
11 Railroad and City, there were some discussions regarding the construction of a grade-separated
12 crossing approximately 1.5 miles east of the existing Stewart Street crossing. The existing Stewart
13 Street at-grade crossing would be closed after construction would be completed, but no timeframe
14 was indicated nor was a source of funding for the cost of a grade-separated crossing identified, which
15 is projected may cost from \$20 million to \$40 million.

16 30. Staff further indicated that after discussions with the Safford District Engineer for
17 ADOT, there are no plans for any grade-separated crossings in the City, and one would not be
18 considered for at least 20 years.

19 31. Based on the record, the improvements and upgrades to be made to the four crossings
20 discussed herein should not adversely impact the ability of area residents to reach their community's
21 hospital, which lies to the north of the Railroad's tracks which is also where the majority of the
22 population resides in the City.

23 32. Mr. Brian Lehman, the Commission's Supervisor of Railroad Safety, testified that he
24 had attended a Commission Town Hall meeting on October 23, 2007, which was attended by
25 approximately 50 to 60 people and four Commissioners. At the meeting, a discussion of grade
26 separation, noise from train whistles and blocked crossings took place. Mr. Lehman testified that
27 business owners are concerned that if a grade separation is constructed in the vicinity of Maley Street
28 that it would detour customers away from the businesses and would be detrimental to the area. (Tr. at

1 p. 44)

2 33. Mr. Lehman also described individuals present at the meeting who, in some instances
3 were in favor, and in some instances, were against the noise made by train whistles. He further
4 testified that, in response to these comments, Mr. Rob Henderson, the Railroad's Manager of Train
5 Operations, indicated that he would work with his crews and their supervisor to remind them of
6 "whistling procedures". (Tr. at p. 44)

7 34. On behalf of the Railroad, Mr. Smith testified that if the City is concerned with a noise
8 issue, City officials will have to take the initial step to work with the FRA on the quiet zone
9 questions. He related that upon the Commission's approval of the Application, the Railroad would
10 contribute funds to the City to alleviate drainage concerns related to the proposed double track
11 project, towards the installation of public restrooms in the City's Railroad Park, and towards the
12 renovation of the Mascot & Western Railroad Car. (Tr. at p. 53)

13 35. Staff is recommending that the Application be approved after taking into consideration
14 the numerous factors described during the hearing including ADT, the LOS and the addition of
15 additional safety equipment which Staff finds are reasonable and in the public interest. Staff
16 additionally cites the City's Resolution in support of the Railroad's Application to alter its crossings
17 along with the Railroad's willingness to address the City's concerns and to provide financial
18 assistance for City projects.

19 36. Staff's recommendations are reasonable and appropriate and the Railroad's
20 Application to alter four crossings by adding a second set of mainline tracks at Maley Street, Stewart
21 Street and Patte Road in the City and at Country Club Drive in the County, should be approved.

22 CONCLUSIONS OF LAW

23 1. The Commission has jurisdiction over the parties and over the subject matter of the
24 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
25 40-337.01.

26 2. Notice of the Application was provided in accordance with the law.

27 3. Installation of the crossing upgrades are necessary for the public's convenience and
28 safety.

4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as

recommended by Staff.

5. After installation of the crossings, the Railroad should maintain the crossings in accordance with A.A.C. R-14-5-104.

ORDER

IT IS THEREFORE ORDERED that the Union Pacific Railroad Company's Application is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the Commission, in writing, within ten days of both the commencement and the completion of the crossing upgrade.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall maintain the crossings at Maley Street, Stewart Street, Patte Road and Country Club Drive in compliance with A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

James L. Gleason
CHAIRMAN

William J. Moore
COMMISSIONER

Jeffrey M. Hatcher-Miller
COMMISSIONER

R. W. G. M. G. M.
COMMISSIONER

Gary J. Stein
COMMISSIONER

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 27th day of Feb., 2008.

Dean S. Miller
DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.: RR-03639A-07-0422

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